

1 them, very good. Have you completed some
2 vocations within the institution that you would
3 be able to utilize?

4 **INMATE ESCALANTE:** No, not here.

5 **PRESIDING COMMISSIONER PEREZ:** Not here,
6 okay, but you have some experience as an
7 electrician and a plumber.

8 **INMATE ESCALANTE:** Yes.

9 **PRESIDING COMMISSIONER PEREZ:** And you
10 learned those skills from your father.

11 **INMATE ESCALANTE:** Yes.

12 **PRESIDING COMMISSIONER PEREZ:** And this
13 was where, in Honduras or here?

14 **INMATE ESCALANTE:** Honduras.

15 **PRESIDING COMMISSIONER PEREZ:** In
16 Honduras. Okay. Very good. Sir, you have a
17 letter of support, right?

18 **INMATE ESCALANTE:** Yes.

19 **PRESIDING COMMISSIONER PEREZ:** Okay. It
20 looks to me like you have several. Let me read
21 into the record the first one, the one that was
22 provided by your counsel, and this is your
23 niece.

24 **INMATE ESCALANTE:** My niece, yes.

25 **PRESIDING COMMISSIONER PEREZ:** Carla
26 Figueroa, right. This letter is dated December
27 4th, 2005. Now, she lives where, in Honduras?

1 **INMATE ESCALANTE:** No. She lives in
2 Canoga Park.

3 **PRESIDING COMMISSIONER PEREZ:** She lives
4 in Canoga. Where is it, Canoga Park?

5 **INMATE ESCALANTE:** Yes.

6 **PRESIDING COMMISSIONER PEREZ:** Okay. The
7 letter, this letter, again, is from your niece,
8 and she, in the letter she does convey her
9 support for you, and she further states,

10 "I would like to ask you to
11 consider his good conduct in all
12 these years he has been in there
13 and give him his freedom back. He
14 is a good man, and I am willing to
15 help him in any way that I can."

16 Right. And then we have another letter from
17 David Jonathon Escalante, and he is your
18 brother.

19 **INMATE ESCALANTE:** My brother, younger
20 brother.

21 **PRESIDING COMMISSIONER PEREZ:** And he
22 lives where? Where does he live?

23 **INMATE ESCALANTE:** Honduras.

24 **PRESIDING COMMISSIONER PEREZ:** Honduras.

25 Okay. And this letter is dated May 5th, 2005.

26 In the letter he writes,

27 "I wish to inform you that prison,

1 that my brother is in prison, and
2 I would like to plead to you if
3 he, if one day he were to come
4 back to Honduras, he would be
5 living in his own house beside me
6 and my family which would be,
7 which and we would be waiting for
8 him with open arms."

9 Now, does your brother own a couple of houses?

10 **INMATE ESCALANTE:** Yeah.

11 **PRESIDING COMMISSIONER PEREZ:** Okay. One
12 of them is right next door to the home that he
13 lives?

14 **INMATE ESCALANTE:** Yeah.

15 **PRESIDING COMMISSIONER PEREZ:** Okay. So
16 that is the one that you would live in?

17 **INMATE ESCALANTE:** Yes.

18 **PRESIDING COMMISSIONER PEREZ:** Okay.
19 Very good. And then we have another letter, and
20 this is from Juan Dela Guzvonsaka (phonetic)
21 (indiscernible).

22 **INMATE ESCALANTE:** (Indiscernible.)

23 **PRESIDING COMMISSIONER PEREZ:** And what
24 is that?

25 **INMATE ESCALANTE:** It's a college
26 building. He owns it, and he got work for me
27 over there.

1 **PRESIDING COMMISSIONER PEREZ:** And he's
2 got work for you.

3 **INMATE ESCALANTE:** Yes.

4 **PRESIDING COMMISSIONER PEREZ:** Okay. So
5 it's an institution of higher learning.

6 **INMATE ESCALANTE:** It's like a college
7 place.

8 **PRESIDING COMMISSIONER PEREZ:** A college
9 place.

10 **INMATE ESCALANTE:** Yeah. He bought the
11 building, and he rent it for.

12 **PRESIDING COMMISSIONER PEREZ:** Oh, I see,
13 I see. Okay. So he owns the building.

14 **INMATE ESCALANTE:** He owns the building.

15 **PRESIDING COMMISSIONER PEREZ:** Where
16 education is offered.

17 **INMATE ESCALANTE:** Yes.

18 **PRESIDING COMMISSIONER PEREZ:** In the
19 letter he writes, I wish to give this friend -
20 he's a friend of yours.

21 **INMATE ESCALANTE:** Yes.

22 **PRESIDING COMMISSIONER PEREZ:** You've
23 known him for years.

24 **INMATE ESCALANTE:** Yeah. When I was a
25 little boy over there.

26 **PRESIDING COMMISSIONER PEREZ:** Over
27 there. Okay.

1 "I would like to give this friend
2 the opportunity to make a better
3 person by offering him a job as an
4 English teacher for my school as
5 well as other management duties
6 that he knows, by which I will be
7 paying him 421 dollars."

8 Right?

9 **INMATE ESCALANTE:** Yes.

10 **PRESIDING COMMISSIONER PEREZ:** Is it
11 8,000 (indiscernible), or what are they?

12 **INMATE ESCALANTE:** Lempiras.

13 **PRESIDING COMMISSIONER PEREZ:** What is
14 it?

15 **INMATE ESCALANTE:** Lempiras.

16 **PRESIDING COMMISSIONER PEREZ:** Lempiras.

17 Okay. A month which equates 421 dollars a
18 month.

19 **INMATE ESCALANTE:** Yes.

20 **PRESIDING COMMISSIONER PEREZ:** And you
21 can make a living on 421 dollars a month in
22 Honduras?

23 **INMATE ESCALANTE:** Yes.

24 **PRESIDING COMMISSIONER PEREZ:** Okay.

25 It's a lot less expensive than here, right?

26 **INMATE ESCALANTE:** Yeah, it is.

27 **PRESIDING COMMISSIONER PEREZ:** Sir, are

1 there any other letters of support, offers of
2 -- what I'm looking for mainly is offers of
3 employment or offers of residence. Are there
4 any other?

5 **INMATE ESCALANTE:** That's the only one I
6 have.

7 **PRESIDING COMMISSIONER PEREZ:** Pardon me?

8 **INMATE ESCALANTE:** That's the only one I
9 have.

10 **PRESIDING COMMISSIONER PEREZ:** That's the
11 only one you have.

12 **INMATE ESCALANTE:** Yeah.

13 **PRESIDING COMMISSIONER PEREZ:** Okay. So
14 we've already entered into the record everything
15 about your parole plans, right?

16 **INMATE ESCALANTE:** Yes.

17 **PRESIDING COMMISSIONER PEREZ:** Okay.

18 Very good. Sir, pursuant to Penal Code Section
19 3042, notices were sent to agencies that would
20 have a direct interest in your case, such as the
21 Public Defenders Office, law enforcement, and
22 Superior Court, and the District Attorney's
23 Office. And I note that although we didn't get
24 anything in writing from any of those entities,
25 we do have the District Attorney from Los
26 Angeles County who will be making a statement
27 prior to the conclusion of this hearing. Okay.

1 At this time, Commissioner Morris will discuss
2 with you what you've been doing within the
3 institutions. Okay.

4 **DEPUTY COMMISSIONER MORRIS:** Okay. Mr.
5 Escalante, your last hearing was May 27th of
6 '03.

7 **INMATE ESCALANTE:** Yeah.

8 **DEPUTY COMMISSIONER MORRIS:** And at that
9 time you had a two-year denial.

10 **INMATE ESCALANTE:** Yes.

11 **DEPUTY COMMISSIONER MORRIS:** Okay. It
12 looks like you were received 4/18 of '91, and
13 I'll just kind of quickly go through your
14 movement through the institution here since you
15 were received at CCI Reception Center. That's
16 April 18 of '91. On June of '91, you were
17 transferred to Pelican Bay. In July of '93, you
18 were transferred to State Prison, Los Angeles
19 County. So you were down there for the opening
20 of that one.

21 **INMATE ESCALANTE:** Yeah. Lancaster.

22 **DEPUTY COMMISSIONER MORRIS:** And it looks
23 like October 9 of '97, you were transferred to,
24 is it Ironwood State Prison. And on 7/8 of '98,
25 you were transferred here, CTF, and that's where
26 you -- okay, you've been here since '98.

27 **INMATE ESCALANTE:** Yes.

1 **DEPUTY COMMISSIONER MORRIS:** Okay. As I
2 go through the file, I see several chronos
3 talking about various Adult Basic Education test
4 scores. I see a test score of 5.0, 6.4, 6.7. I
5 also see a GED that you earned dated October 13
6 of 2000.

7 **INMATE ESCALANTE:** Yes.

8 **DEPUTY COMMISSIONER MORRIS:** Okay. With
9 that GED completed, have you been able to
10 participate in or complete any vocational
11 programs?

12 **INMATE ESCALANTE:** No. They got me on
13 the waiting list.

14 **DEPUTY COMMISSIONER MORRIS:** Okay. Since
15 1991?

16 **INMATE ESCALANTE:** Yes.

17 **DEPUTY COMMISSIONER MORRIS:** Okay. I see
18 that you're on the bulk computer waitlist. I
19 saw that. I saw machine shop waitlist.

20 **INMATE ESCALANTE:** Yes.

21 **DEPUTY COMMISSIONER MORRIS:** What's the
22 bar to getting in? What's the problem? Why
23 can't you get into a vocation?

24 **INMATE ESCALANTE:** You got to wait
25 because the list is long.

26 **DEPUTY COMMISSIONER MORRIS:** Well, we're
27 talking 14 years down the road now.

1 **INMATE ESCALANTE:** No. I'm on the
2 waiting list since after I got my GED.

3 **DEPUTY COMMISSIONER MORRIS:** Okay. In
4 2000.

5 **INMATE ESCALANTE:** Yes.

6 **DEPUTY COMMISSIONER MORRIS:** Okay.

7 That's right. So you were not eligible until
8 you got the GED.

9 **INMATE ESCALANTE:** Right.

10 **DEPUTY COMMISSIONER MORRIS:** Okay. Now,
11 as I review your C-File, I also see that you
12 were involved in those ABE classes all through
13 the '90s.

14 **INMATE ESCALANTE:** Yes.

15 **DEPUTY COMMISSIONER MORRIS:** Okay. And
16 that got you to the point where you could pass
17 your GED. After that, what did you do? What
18 are you doing now? Are you working anywhere?

19 **INMATE ESCALANTE:** I'm working on the
20 Chapel, Catholic Chapel.

21 **DEPUTY COMMISSIONER MORRIS:** Say that
22 again slowly.

23 **INMATE ESCALANTE:** Catholic Chapel.

24 **DEPUTY COMMISSIONER MORRIS:** Are you a
25 clerk over there?

26 **INMATE ESCALANTE:** No. I'm the porter.

27 **DEPUTY COMMISSIONER MORRIS:** Porter?

1 **INMATE ESCALANTE:** Yes.

2 **DEPUTY COMMISSIONER MORRIS:** And when did
3 you become a porter?

4 **INMATE ESCALANTE:** Right after I got my
5 GED.

6 **DEPUTY COMMISSIONER MORRIS:** So you've
7 been a porter since --

8 **INMATE ESCALANTE:** In 2000, December
9 2000.

10 **DEPUTY COMMISSIONER MORRIS:** In 2000,
11 December 2000?

12 **INMATE ESCALANTE:** Yeah.

13 **DEPUTY COMMISSIONER MORRIS:** So all of
14 2003 through today.

15 **INMATE ESCALANTE:** Yes.

16 **DEPUTY COMMISSIONER MORRIS:** Okay. And
17 can I assume that your supervisory work reports
18 are satisfactory?

19 **INMATE ESCALANTE:** Yeah.

20 **DEPUTY COMMISSIONER MORRIS:** Huh?

21 **INMATE ESCALANTE:** Yes. I have some.

22 **ATTORNEY HURST:** Under notices and
23 responses there is actually a letter.

24 **DEPUTY COMMISSIONER MORRIS:** I don't see
25 it. I see '98, '98, Catholic Chapel,
26 (indiscernible) George Martin.

27 **INMATE ESCALANTE:** Yeah.

1 **DEPUTY COMMISSIONER MORRIS:** Is that who
2 you work for?

3 **INMATE ESCALANTE:** No. Now, I work for
4 Chaplain Christine.

5 **DEPUTY COMMISSIONER MORRIS:** Okay. I see
6 a chrono dated 4/11 of 2003, with exceptional
7 reports. Before that, I see you were - it looks
8 like you tried machine shop, a machine or
9 something like that. What happened with that?

10 **INMATE ESCALANTE:** I was moved here. I
11 was in North (indiscernible).

12 **DEPUTY COMMISSIONER MORRIS:** That's
13 right, North. They had a class for you at
14 North, but you had to move out of there.

15 **INMATE ESCALANTE:** Yeah. I think the
16 class was closed.

17 **DEPUTY COMMISSIONER MORRIS:** Okay. In
18 2000, you were at North. Catholic Chapel, with
19 satisfactory work reports, and the only other
20 chrono I see after that -- that's the last
21 chrono.

22 **INMATE ESCALANTE:** I have one from
23 Christine, my new boss Christine Manyamana
24 (phonetic).

25 **DEPUTY COMMISSIONER MORRIS:** Okay. And
26 what does she say about you?

27 **INMATE ESCALANTE:** There's a letter

1 there. I haven't read it yet.

2 **DEPUTY COMMISSIONER MORRIS:** Did she give
3 it to you?

4 **ATTORNEY HURST:** Here, it's under notices
5 and responses rather than a chrono.

6 **DEPUTY COMMISSIONER MORRIS:** Then why
7 would it go to the file if you haven't seen it,
8 you don't know anything about it?

9 **INMATE ESCALANTE:** Yeah. I put them in
10 the file there.

11 **DEPUTY COMMISSIONER MORRIS:** The question
12 is what do you know about it?

13 **INMATE ESCALANTE:** No. She asked me
14 about my -

15 **DEPUTY COMMISSIONER MORRIS:** Talk to me
16 now. I'm asking you about your last supervisory
17 report. That's who you work for now, right?

18 **INMATE ESCALANTE:** Yeah.

19 **DEPUTY COMMISSIONER MORRIS:** Christine?

20 **INMATE ESCALANTE:** Yeah, Christine.

21 **DEPUTY COMMISSIONER MORRIS:** What does
22 Christine say about you?

23 **INMATE ESCALANTE:** It's right there.

24 **DEPUTY COMMISSIONER MORRIS:** I'm asking
25 you.

26 **PRESIDING COMMISSIONER PEREZ:** Did you
27 read the letter?

1 **INMATE ESCALANTE:** No. I don't have it.

2 **DEPUTY COMMISSIONER MORRIS:** Okay. See,

3 I don't understand how you could possibly have
4 something in your file that you don't know
5 about. That's suspicious to me. It doesn't
6 sound right: March 10 of '05, March 10 of '05.

7 Okay. All right. Does anyone else have any
8 good things to say about you?

9 **INMATE ESCALANTE:** No.

10 **DEPUTY COMMISSIONER MORRIS:** Okay. And
11 as I indicated, that chrono is not in the file,
12 so what do -- do you know what you need to do
13 with that?

14 **INMATE ESCALANTE:** No.

15 **DEPUTY COMMISSIONER MORRIS:** You said
16 you've given, have you given it to your
17 counselor?

18 **INMATE ESCALANTE:** Yeah.

19 **DEPUTY COMMISSIONER MORRIS:** Okay. So
20 the counselor is going to see that it gets to
21 the file maybe.

22 **INMATE ESCALANTE:** Yeah. That in the
23 file.

24 **DEPUTY COMMISSIONER MORRIS:** But before
25 he does that, hopefully, you'll read it before
26 you -- you need to know what goes in your file.
27 Have you ever reviewed your file?

1 **INMATE ESCALANTE:** Yeah, I did.

2 **DEPUTY COMMISSIONER MORRIS:** Okay.

3 **ATTORNEY HURST:** Commissioner Morris.

4 **DEPUTY COMMISSIONER MORRIS:** Yes.

5 **ATTORNEY HURST:** I'm just noting -- this
6 is the notes that I took from the C-File, not
7 from this file but from the C-File, and I did
8 note it, so it would appear that I found it
9 somewhere in the C-File.

10 **DEPUTY COMMISSIONER MORRIS:** Okay.

11 **ATTORNEY HURST:** At that time.

12 **DEPUTY COMMISSIONER MORRIS:** Okay.

13 **ATTORNEY HURST:** Which was about two and
14 a half weeks ago.

15 **DEPUTY COMMISSIONER MORRIS:** Okay. Well,
16 it's not where it's supposed to be today. It
17 should be right here. I may run across it by
18 and by, but it's not where it's supposed to be,
19 and these things are listed in chronological
20 order.

21 **ATTORNEY HURST:** Well, I don't think it
22 was filed as a chrono but either in
23 miscellaneous or back in parole.

24 **DEPUTY COMMISSIONER MORRIS:** Maybe it's a
25 general chrono or something, but it's not, it's
26 not as a supervisory work report which is what
27 I'm looking at right now.

1 **ATTORNEY HURST:** Right. You're right.

2 **DEPUTY COMMISSIONER MORRIS:** It may be a

3 different document. Okay. We'll get there.

4 Okay. That chapel porter, is that a pay number?

5 **INMATE ESCALANTE:** Yes.

6 **DEPUTY COMMISSIONER MORRIS:** Okay. And

7 what do you earn there?

8 **INMATE ESCALANTE:** Twenty dollar.

9 **DEPUTY COMMISSIONER MORRIS:** Okay. All

10 right. Anything else about your work or

11 vocations that we need to talk about? Did we

12 miss anything?

13 **INMATE ESCALANTE:** No.

14 **DEPUTY COMMISSIONER MORRIS:** Okay. All

15 right. Let me, let me ask you about self-help,

16 and I notice that you've got alcohol, marijuana,

17 cocaine in your history, and I see a number of

18 chronos in your file it seems like from about

19 1995 through '04, with through '05, chronos

20 talking about AA participation. So you've

21 participated?

22 **INMATE ESCALANTE:** Yeah.

23 **DEPUTY COMMISSIONER MORRIS:** With some

24 regularity?

25 **INMATE ESCALANTE:** Well, you know, once

26 in a while if you wish you talk, you can get up.

27 **DEPUTY COMMISSIONER MORRIS:** Okay. Have

1 you learned anything about the 12 Steps?

2 **INMATE ESCALANTE:** Yeah.

3 **DEPUTY COMMISSIONER MORRIS:** What's

4 Number Nine?

5 **INMATE ESCALANTE:** Huh? Number Nine?

6 Made direct amends to such people except when to
7 do so would injure them or others.

8 **DEPUTY COMMISSIONER MORRIS:** Okay. Good.

9 I also see that you've taken some classes. This
10 goes back way before your last hearing, but I'm
11 just going to bring it forward anyway. You took
12 some health classes, health care classes, having
13 to do with HIV, AIDS, TB, sexually transmitted
14 disease, Tuberculosis, those kind of things, and
15 that was in '02.

16 **INMATE ESCALANTE:** Yes.

17 **DEPUTY COMMISSIONER MORRIS:** And I see in
18 '05, the only thing I see in terms of
19 participating in anything is the soccer league.
20 Have you done anything else besides the soccer
21 league?

22 **INMATE ESCALANTE:** Well, I've done Anger
23 Management. I've done the Impact Program.

24 **DEPUTY COMMISSIONER MORRIS:** What year
25 did you -- you did Anger Management in '05, this
26 year?

27 **INMATE ESCALANTE:** No, no, not this year.

1 **DEPUTY COMMISSIONER MORRIS:** Okay. What
2 else have you done since?

3 **INMATE ESCALANTE:** I just go to the
4 regular meetings.

5 **DEPUTY COMMISSIONER MORRIS:** What else
6 have you done besides AA in '03?

7 **INMATE ESCALANTE:** AA and NA.

8 **DEPUTY COMMISSIONER MORRIS:** Okay. So
9 just AA.

10 **INMATE ESCALANTE:** Yes.

11 **DEPUTY COMMISSIONER MORRIS:** Okay.

12 **INMATE ESCALANTE:** And NA.

13 **DEPUTY COMMISSIONER MORRIS:** AA and NA.
14 Right. All right. All right. Let me move on
15 to the psych report. Okay. I'm looking at a
16 mental health evaluation dated December 7 of
17 '05. This document is authored by, it looks
18 like Petracek, the contract psychologist, and
19 I'm looking at diagnosis here on page three.
20 It's the second section from the bottom. Under
21 Axis I, you're listed as Poly-substance Abuse,
22 as having Poly-substance Abuse by History and
23 that is in Institutional Remission; Axis II is
24 Deferred; Axis III, None; Axis IV is
25 Psychosocial Stressors to Include Incarceration;
26 Axis V, the Global Assessment Functioning test,
27 commonly called a GAF Score is 75. I'm looking

1 at assessment of dangerousness, and Petracek
2 indicates that within a controlled setting your
3 risk is minimal. If released in the community,
4 the risk is -- or if released into the
5 community, the risk is also minimal.
6 Significant risk factors, precursors to
7 violence, are his past alcohol and substance
8 abuse, and relapse would increase his risk of
9 violence, risk for violence and due to gains he
10 has made, he has not received any CDC 115s and
11 has matured since being incarcerated. Under
12 comments and recommendations, she goes on to say
13 that if paroled you should be mandated to attend
14 both NA, AA and have frequent, periodic drug
15 testing for alcohol and illegal substances. She
16 says that this inmate's still denies any
17 responsibility for his crime. He needs to
18 develop some insight or reasonable explanation
19 before being considered for parole. Those
20 comments were authored by Petracek. And having
21 heard that, do you take exception to any part of
22 that, or do you agree with that?

23 **INMATE ESCALANTE:** Agree with what?

24 **DEPUTY COMMISSIONER MORRIS:** Anything
25 that she just said about you, do you take
26 exception to any of that, or is it pretty much
27 right on?

1 **INMATE ESCALANTE:** It's all right.

2 **DEPUTY COMMISSIONER MORRIS:** It's okay?

3 **INMATE ESCALANTE:** It's okay.

4 **DEPUTY COMMISSIONER MORRIS:** Okay. All
5 right. Is there anything else we need to talk
6 about, about your post-conviction factors that,
7 post-conviction factors that I missed?

8 **INMATE ESCALANTE:** No.

9 **DEPUTY COMMISSIONER MORRIS:** Okay. I
10 yield it to the Chair.

11 **PRESIDING COMMISSIONER PEREZ:** Thank you.
12 At this time, I would like to give the DA the
13 opportunity to ask questions through the Chair,
14 please.

15 **DEPUTY DISTRICT ATTORNEY DELAVIGNE:** No
16 questions.

17 **PRESIDING COMMISSIONER PEREZ:** Counsel.

18 **ATTORNEY HURST:** No questions.

19 **PRESIDING COMMISSIONER PEREZ:** Mr.
20 Morris.

21 **DEPUTY COMMISSIONER MORRIS:** None.

22 **PRESIDING COMMISSIONER PEREZ:** Closing
23 statement, please.

24 **DEPUTY DISTRICT ATTORNEY DELAVIGNE:** I
25 have nothing to address. Until the inmate gains
26 some insight into what he did and makes some
27 comment about it, I have nothing to say except

1 to oppose a finding of suitability.

2 **PRESIDING COMMISSIONER PEREZ:** Thank you.

3 Counsel.

4 **ATTORNEY HURST:** Okay. I don't have a
5 lot to say either. Mr. Escalante's position on
6 the life crime has been placed on the record
7 before, and we know you have to accept the
8 conviction, and he's been down nearly 15 years
9 on this crime, so he's doing the time for it.
10 And he's done quite a good job certainly in the
11 area of disciplinaries, no 115s at all. That's
12 not really easy. He's in the broad areas of
13 educational and vocational upgrading. He has
14 achieved his GED in the year 2000, and he's
15 currently on several waiting lists. He did
16 state to you that he has plumbing and electrical
17 experience in the past. Self-help, there has
18 been some. There has been the Impact Program
19 and continued participation in AA and NA. The
20 most recent psych report, I'm not really sure
21 what that report says. It says that he is a
22 minimal risk if he's released to the community
23 which I would assume is what we're looking for.
24 That is what we're looking for today, and she
25 notes he has no 115s, and he has matured. On
the other hand, she questions his insight if he
27 committed the crime, and he has been convicted

1 of it, then he may be lacking in insight. If he
2 didn't, of course, he's lacking in knowledge of
3 it. So I can understand the doctor doesn't have
4 too many choices in her conclusion there. He
5 does have parole plans though, and very much to
6 his credit, he has developed dual parole plans
7 so that he would have a place to live if he
8 remains in the United States and a place to live
9 and work if he is deported. So he's made some
10 preparation. I think he's serious about
11 preparing himself. I just ask you to consider
12 the positive things he's accomplished. Submit
13 it.

14 **PRESIDING COMMISSIONER PEREZ:** All right.
15 Thank you. Sir, this is your opportunity to
16 provide a statement to the Panel regarding your
17 suitability for parole. Tell us why you feel
18 that you are suitable for parole.

19 **INMATE ESCALANTE:** First of all, I wish
20 an apology to the victim and the victim's
21 family, and the People of California, also, my
22 family, and say I'm not a threat to public
23 safety, and I'm a changed person.

24 **PRESIDING COMMISSIONER PEREZ:** Thank you,
25 sir. We will now recess for deliberations. The
26 time is 4:44 p.m.

1 **CALIFORNIA BOARD OF PAROLE HEARINGS**2 **D E C I S I O N**3 **DEPUTY COMMISSIONER MORRIS:** Back on
4 record.

5 **PRESIDING COMMISSIONER PEREZ:** Sir, the
6 Panel has reviewed all the information received
7 from the public and relied on the following
8 circumstances in concluding that you are not
9 suitable for parole and that you would pose an
10 unreasonable risk of danger to society or a
11 threat to public safety if released from prison
12 at this time. Sir, one of the main factors that
13 we took into consideration is the gravity of the
14 offense in that after reviewing the facts of
15 this crime, it is the opinion of this Panel that
16 the offense was carried out in an especially
17 cruel and callous manner in that the victim was
18 hit and kicked and knocked to the ground. Once
19 he was on the ground, the record reflects that
20 you grabbed him by the hair and stabbed him in
21 the eye resulting in the loss, permanent loss,
22 of sight in that particular eye as well as a
23 frontal lobotomy. The offense was carried out
24 in a dispassionate and calculated manner in that
25 the record reflects that you asked to borrow the
26 victim's car. When he refused, you left. You

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1 returned with three of your friends. You waited
2 for the victim to come back to his vehicle, and
3 it is at that point that he was attacked and
4 stabbed. The offense was carried out in a
5 manner which demonstrates an exceptionally
6 callous disregard for human suffering in that it
7 is unimaginable the physical and emotional
8 trauma this victim endured during the beating as
9 well as the physical and emotionally, mental
10 issues that he will endure for the rest of his
11 life as a result of having permanent loss of
12 sight in one eye as well as a frontal lobotomy
13 and that the negative effects that go with that.
14 Sir, these conclusions are drawn from the
15 Statement of Facts wherein according to the
16 record, on September 10th, 1990, at
17 approximately 4:20 p.m. you got in an argument.
18 You and the victim were involved in an argument.
19 You wanted to borrow the victim's car. He
20 refused. You left. You came back with your
21 friends. You and your friends started hitting
22 and kicking the victim. When the victim was
23 down, you struck the victim in the eye with a
24 knife penetrating the brain. The other factor
25 that we took into consideration, sir, is that
26 you entered this country in approximately 1984,
27 JUSTO ESCALANTE E-91258 DEC. PAGE 2 12/15/05

1 and four years later, you were already
2 entrenched in the criminal, in criminal
3 activities in that you were arrested on a number
4 of occasions prior to the commitment offense for
5 drug-related offenses to include transportation
6 and sales of narcotics and controlled substance,
7 murder, possession of a firearm, grand theft
8 vehicle, possession of narcotic, controlled
9 substance, possession of bad checks and money
10 orders. One of those offenses resulted in a
11 conviction for which you were sentenced, a
12 felony conviction for which you were sentenced
13 to 180 days in jail, fined, and 36 months
14 probation. We note for the record that prior to
15 the commitment offense you had failed to profit
16 from society's previous attempts to correct your
17 criminality. Such attempts include adult
18 probation and county jail, again, for
19 transportation and sales of controlled
20 substance. The record reflects that you have an
21 unstable social history and prior criminality as
22 previously outlined which includes the arrest
23 and, or convictions that were previously noted
24 to include the use of marijuana and cocaine.
25 Sir, since you've been incarcerated, you have
26 programmed in a limited manner. You are to be
27 JUSTO ESCALANTE E-91258 DEC. PAGE 3 12/15/05

1 commended for not having incurred any 115s
2 throughout your entire incarceration. However,
3 the record reflects that you have not completed
4 any vocations throughout the entire time that
5 you have been in prison. And although you have
6 taken advantage of some self-help programs
7 within the institution, sir, you have not
8 sufficiently participated in beneficial self-
9 help specifically to address the issue of
10 insight. The most recent psychological report,
11 sir, that was also taken into consideration is
12 somewhat contradictory but at the same time it
13 is not totally supportive of release. This
14 particular report was prepared by Contract
15 Psychologist Laura Petracek, P-E-T-R-A-C-E-K,
16 dated December 8th, 2005, in which she indicates
17 that you your risk if released to the community
18 is minimal; however, she further states this
19 inmate still denies any responsibility for his
20 crime. He needs to develop some insight or
21 reasonable explanation before being considered
22 for parole. Sir, in a separate decision the
23 Hearing Panel notes that you have been convicted
24 of aggravated mayhem with use of a deadly
25 weapon, specifically a knife. As such, it would
26 not be reasonable to expect that you would be
27 JUSTO ESCALANTE E-91258 DEC. PAGE 4 12/15/05

1 granted parole during the next two years. So as
2 a result, sir, we're going to deny you for two
3 years. Again, one of the main reasons is the
4 gravity of the offense in that it is the opinion
5 of this Panel after reviewing the facts of this
6 crime the offense was carried out in an
7 especially cruel and callous manner in that the
8 victim was hit, kicked, knocked to the ground.
9 Once he was on the ground, you grabbed him by
10 the hair, and you proceeded to stab him in the
11 eye, and that stab wound penetrated into his
12 brain resulting in permanent loss of sight in
13 his eye as well as a frontal lobotomy. The
14 offense was carried out in a dispassionate and
15 calculated manner in that the record reflects
16 that you initially approached the victim. You
17 asked him to use his, to borrow his car. He
18 refused. You left. You went got three of your
19 friends. You came back. You waited by the
20 vehicle, and then when the victim came out
21 towards his vehicle, you and your friends
22 proceeded to attack him, and once he hit the
23 ground, you grabbed him by the hair, and you
24 stabbed him in the eye, penetrating that knife
25 into his brain. The offense was carried out in
26 a manner which demonstrates an exceptionally
27 JUSTO ESCALANTE E-91258 DEC. PAGE 5 12/15/05

1 callous disregard for human suffering in that it
2 is unimaginable the physical and emotional
3 trauma that this individual endured at the time
4 of the offense and will endure for the remainder
5 of his life as a result of the problems that he
6 will encounter as a result of the permanent loss
7 of sight in one eye and the frontal lobotomy,
8 the problems that go with a frontal lobotomy.
9 These conclusions are drawn from the Statement
10 of Facts wherein according to the record on
11 September 10th, 1990, you got in an argument
12 with the victim. You and the victim were
13 involved in an argument because you wanted to
14 use his car. He refused to lend it to you. You
15 went and got your friends. You returned, and
16 when the victim came out of his residence, the
17 residence that he was visiting and approached
18 his vehicle, you and your friends proceeded to
19 attack him with you grabbing him by the hair
20 once he was on the ground and stabbing him in
21 the eye penetrating into the brain resulting in
22 permanent loss of sight in his right eye and a
23 frontal lobotomy. The other factor that we took
24 into consideration in this multi-year denial is
25 the fact that you entered this country in 1984,
26 and four years later you were already entrenched
27 JUSTO ESCALANTE E-91258 DEC. PAGE 6 12/15/05

1 in criminal activities, specifically,
2 transporting, transportation and sales of
3 controlled substance in that the record reflects
4 that you have been convicted on a number of
5 occasions for transporting, sales of controlled
6 substance resulting in one conviction in that
7 you were placed on adult probation in which you
8 were assessed county jail time. The record also
9 reflects that you have other arrests and, or
10 convictions, or detentions for transportation,
11 several for transportation and sales of
12 controlled substance, murder, (indiscernible),
13 possession of a firearm, grand theft vehicle, as
14 well as possession of bad checks, and possession
15 of narcotics and controlled substances. The
16 record also reflects that you have a history of
17 using illicit substances as well as selling
18 them, specifically, marijuana and cocaine.
19 Again, we do note that it is the opinion of this
20 Panel based on a review of the record that you
21 have not sufficiently participated in beneficial
22 self-help, specifically, to address the issue of
23 insight. In addition, sir, although you have
24 been involved in some self-help within the
25 institutions, the record does not reflect that
26 you have completed any vocations during the
27 JUSTO ESCALANTE E-91258 DEC. PAGE 7 12/15/05

1 entire time that you have been incarcerated.
2 Again, the most recent psychological report is
3 not totally supportive of release, and
4 furthermore, it is somewhat contradictory in
5 that it indicates that if you were to be
6 released to the community, your risk would be
7 minimal. However, the doctor firmly states that
8 any, that you deny any responsibility and that
9 you need to develop some insight or at least a
10 reasonable explanation before being considered
11 for parole. In terms of your parole plans, sir,
12 we do not for the record that you do have
13 realistic parole plans in that more likely than
14 not, given the circumstances under which you
15 were in this country, more likely than not you
16 would be deported to Honduras, and we do have
17 letters in your file that support your parole
18 plans to live with your brother and, or your
19 cousin upon your release to parole. In
20 addition, sir, we do not find based on a review
21 of the record that you have a marketable skill,
22 at least not one that you have developed since
23 you've been incarcerated. However, you have
24 indicated to this Panel that you have experience
25 as an electrician or a plumber. That is
26 questionable. Let me tell you why that is
27 JUSTO ESCALANTE E-91258 DEC. PAGE 8 12/15/05

1 questionable. You came to this country when you
2 were 20 -- you committed the offense when you
3 were 21 years of age. You came to this country
4 four years earlier. That would put you at the
5 age of 17.

6 **INMATE ESCALANTE:** No. I was 26.

7 **PRESIDING COMMISSIONER PEREZ:** You were
8 26. Okay. When I said that, you should have
9 corrected me, sir. You were 26. So that means
10 -- you were 26 when you committed the offense?

11 **INMATE ESCALANTE:** Yes.

12 **PRESIDING COMMISSIONER PEREZ:** Or when
13 the offense was committed, which means that you
14 came to this country when you were 22.

15 **INMATE ESCALANTE:** About 22.

16 **PRESIDING COMMISSIONER PEREZ:** Twenty-
17 two. Okay. So I would imagine it would be
18 somewhat limited experience as an electrician or
19 a plumber in that you were about 22 at the time
20 you came to this country. That doesn't mean
21 that it's not possible that you have those
22 skills. I'm just saying that it seems like your
23 skills wouldn't be extensive in that you were
24 pretty young already when you came to this
25 country, and you indicated that you developed
26 those skills when you were in Honduras from your

1 father. Sir, the Hearing Panel notes that
2 responses to Penal Code Section 3042 indicate an
3 opposition to a finding of parole suitability by
4 the District Attorney of Los Angeles County.

5 Sir, what year were you born?

6 **INMATE ESCALANTE:** March 26, '63.

7 **PRESIDING COMMISSIONER PEREZ:** Sixty-
8 three. Okay. The reason I say that is because
9 you gave me the impression that you were 21 is
10 that your rap sheet shows that you were born in
11 1969.

12 **INMATE ESCALANTE:** Sixty-three.

13 **PRESIDING COMMISSIONER PEREZ:** But your
14 rap sheet also shows that you were born in 1963,
15 and your rap sheet shows that you were born in
16 1970, and then your rap sheet again shows us
17 another birth date in 1963. My assumption was
18 you were born in 1969. As indicated, you were
19 born in 1963. Right?

20 **INMATE ESCALANTE:** I've got a birth
21 certificate.

22 **PRESIDING COMMISSIONER PEREZ:** Okay. So
23 that would make you about 42.

24 **INMATE ESCALANTE:** Forty-two.

25 **PRESIDING COMMISSIONER PEREZ:** Forty-two.
26 Okay. Very good. Sir, the Panel makes the
27 **JUSTO ESCALANTE E-91258 DEC. PAGE 10 12/15/05**

1 following findings, and that is that you need to
2 participate in more self-help and, or therapy in
3 order to help you come to terms with the
4 underlying cause of the commitment offense in
5 that even though you are not required to discuss
6 or admit to the commitment offense, you still
7 need to be able to demonstrate some sort of
8 insight when you come before this Panel, and you
9 have not done that today. You have really not
10 done that. And until progress is made, it is
11 the opinion of this Panel that you will continue
12 to be unpredictable and a threat to others.
13 Nevertheless, sir, we would like to take this
14 opportunity to commend you for not having
15 received any 115s throughout the entire time
16 that you have been incarcerated. That's very
17 commendable. We understand that it can be
18 difficult for you to maneuver through these
19 shark-infested waters within the institution
20 without incurring any 115s, so we certainly
21 commend you for having the ability and the skill
22 to not incur any disciplinaries while within the
23 institutions. Sir, we'd also like to commend
24 you for the multiple laudatory chronos in your
25 file as well as for your continued participation
26 in AA, NA; however, sir, these positive aspects
27 JUSTO ESCALANTE E-91258 DEC. PAGE 11 12/15/05

1 of your behavior do not outweigh the factors of
2 unsuitability. As a result, we're going to deny
3 you for two years. In the meantime, we make the
4 following recommendations. We recommend, if
5 you're able to do so, you complete at least one
6 trade during the next two years. I imagine
7 that's the only thing you could complete within
8 the next two years if you were to be placed in a
9 trade this moment because a lot of those trades
10 do take about two years or so on the average.
11 So if you're able to get into a trade, do that,
12 and if you're able to complete it before you
13 come before the Board in two years, we would
14 certainly (indiscernible) that.

15 **DEPUTY COMMISSIONER MORRIS:** I'm turning
16 the tape over.

17 [Thereupon, the tape was turned over.]

18 **DEPUTY COMMISSIONER MORRIS:** We're back
19 on record.

20 **PRESIDING COMMISSIONER PEREZ:** And we
21 recognize that. We recognize that. You got
22 your GED in 2000, and we certainly commend you
23 for that, and we recognize that until you either
24 get your GED or reach a certain grade point
25 level that they won't consider you for
26 vocations, so we understand that. What we're
27 **JUSTO ESCALANTE E-91258 DEC. PAGE 12 12/15/05**

1 saying is if you're able to do it, and you said
2 you are on the waiting list, so if you're able
3 to get into one of those vocations we would
4 encourage you to take advantage of it and do it.
5 Also, take advantage, immerse yourself in any
6 and all self-help that might be available within
7 the institutions. If there is nothing
8 available, then we would recommend that you go
9 to the library or talk to your counselor or
10 other individuals within the institution that
11 might have resources, if they could point you to
12 so that you can do some self study. Okay. Do
13 you know what I mean by self study?

14 **INMATE ESCALANTE:** Right.

15 **PRESIDING COMMISSIONER PEREZ:** If you do
16 some self study, bring in a book report and tell
17 us what you're learning next room to demonstrate
18 that you're being proactive, okay, in trying to
19 develop insight and learn a little bit more
20 about yourself so that once you're released to
21 parole you won't be involved in criminality.

22 Okay. Also, we do recommend that you earn
23 positive chronos. You have numerous positive
24 chronos or a number of positive chronos in your
25 file, but we recommend that if you're able to do
26 so, continue doing this good work that you've
27 **JUSTO ESCALANTE E-91258 DEC. PAGE 13 12/15/05**

1 been doing so that you can get more laudatory
2 chronos placed in your file. And of course,
3 continue to remain disciplinary-free. You're
4 doing very well so far with no 115s. We
5 encourage you to continue in that same path.
6 But at the same time we do note that you do have
7 three 128s; 128s also affect you as well because
8 one of them is a little violation. The other is
9 bigger violation. Either way they're still
10 violations of institutional procedures, policy,
11 and so we recommend that you not incur any 115s
12 or 128s. Okay. Mr. Morris.

13 **DEPUTY COMMISSIONER MORRIS:** I think
14 you've covered everything, but Mr. Escalante
15 just let me just encourage you to follow up on
16 that machine shop. Okay.

17 **INMATE ESCALANTE:** I think the shop is
18 closed.

19 **DEPUTY COMMISSIONER MORRIS:** Pardon me?

20 **INMATE ESCALANTE:** The shop is closed.

21 It's over in North.

22 **DEPUTY COMMISSIONER MORRIS:** Okay.

23 **INMATE ESCALANTE:** I'm in Central right
24 here.

25 **DEPUTY COMMISSIONER MORRIS:** Okay.

26 **INMATE ESCALANTE:** We have here computer

27 **JUSTO ESCALANTE E-91258 DEC. PAGE 14 12/15/05**

1 and print shop. I am on the waiting list for
2 that.

3 **DEPUTY COMMISSIONER MORRIS:** I think
4 you're going to find that if you make contact
5 with the supervisor of education programs that
6 there are more than two programs available at
7 the institution. I find that hard to believe
8 that there are only two. But be that as it may,
9 you check it out. Do what you can to try to
10 complete one or at least be involved in it when
11 you come back here. Okay. Again, you're doing
12 a good job with the chronos, the laudatories.
13 Keep generating those. You remain absolutely
14 disciplinary-free. Those things will hurt you.
15 Okay. The last negative chrono was in '98, so
16 you're doing a pretty good job with that. Just
17 stay the course right there and continue to
18 participate in AA, NA, those kinds of things.
19 Okay. That's it.

20 --

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27 JUSTO ESCALANTE E-91258 DEC. PAGE 15 12/15/05

1 **PRESIDING COMMISSIONER PEREZ:** Sir, we do
2 wish you the best of luck. This concludes this
3 hearing. The time is 5:12 p.m. Good luck, sir.

4 **--oOo--**

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23 **PAROLE DENIED TWO YEARS**

24 **THIS DECISION WILL BE FINAL ON: Apr. 14, 2006**

25 **YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT**
26 **DATE, THE DECISION IS MODIFIED.**

27 **JUSTO ESCALANTE E-91258 DEC. PAGE 16 12/15/05**

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, KRISTIN LEDBETTER, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 57, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING OF JUSTO ESCALANTE, CDC NO. E-91258, ON DECEMBER 15, 2005, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated DECEMBER 31, 2005, at Sacramento, California.

Kristin Ledbetter
KRISTIN LEDBETTER
TRANSCRIBER
PETERS SHORTHAND REPORTING

EXHIBIT B

FILED
Los Angeles Superior Court

OCT 01 2006

John A. Clarke, Executive Officer/Clerk

Deputy Jeffrey D. Johnson, Deputy

JOSEPH M. PULIDO, S.C.C.
233219

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

In re, Case No.: BH003993
JUSTO ESCALANTE, ORDER RE: WRIT OF HABEAS CORPUS
Petitioner,
On Habeas Corpus

The Court has read and considered petitioner's Writ of Habeas Corpus filed on April 28, 2006. Having independently reviewed the record, giving deference to the broad discretion of the Board of Prison Hearings ("Board") in parole matters, the Court concludes that the record contains "some evidence" to support the Board's finding that petitioner is unsuitable for parole. (See Cal. Code Regs., tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667 (hereafter *Rosenkrantz*)).

Petitioner is serving a term of 7 years to life with a minimum parole eligible date of May 29, 1998. Petitioner was convicted of aggravated mayhem with the use of a deadly weapon, in violation of Penal Code sections 205 and 12022(b). The record reflects that on September 10, 1990, petitioner entered into an argument with the victim over the victim's refusal to loan petitioner his car. Petitioner left the scene and returned with several friends. Petitioner and his friends started to hit and kick the victim and while the victim was down, petitioner stabbed the victim in the eye with a knife, which penetrated to the victim's brain. The victim suffered

1 permanent loss of sight in his right eye and a frontal lobotomy was performed resulting in
2 permanent brain damage.

3 The record reflects that the Board found petitioner unsuitable for parole after a parole
4 consideration hearing held on December 15, 2005. Petitioner was denied parole for two years.
5 The Board concluded that Petitioner was unsuitable for parole and would pose an unreasonable
6 risk of danger to society and a threat to public safety if released from prison. The Board based
7 its decision on several factors, including his commitment offense. The Court finds that there is
8 no evidence to support the Board's findings that the commitment offense was "dispassionate and
9 calculated," such as an execution-style murder (see Cal. Code Regs., tit. 15, § 2402, subd.
10 (c)(1)(B)) and that the "offense was carried out in a manner that demonstrates an exceptionally
11 callous disregard for human suffering" (see Cal. Code Regs., tit. 15, § 2402, subd. (c)(1)(D)).
12 Although there is no evidence to support the Board's specific findings regarding the commitment
13 offense, the Court nevertheless finds that there is some evidence that the commitment offense
14 was one in which the victim was abused, defiled or mutilated during or after the offense. (See
15 Cal. Code Regs, tit. 15, § 2402, subd. (c)(1)C.) "We may uphold the [Board's] decision, despite
16 a flaw in its findings, if the authority has made clear it would have reached the same decision
17 even absent the error." (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1100.) Based on the fact that
18 the Board's discussion of the commitment offense cited to the petitioner hitting, kicking and
19 knocking the victim to the ground before stabbing him, the Court concludes that the Board's
20 mistake does not invalidate its decision to deny parole based on the commitment offense.

21 The record further reflects that the Board also relied on several additional factors in
22 denying petitioner parole at this time, and there is some evidence to support that decision. The
23 Court finds that there is some evidence to support the Board's findings that petitioner is
24 unsuitable based on insufficient self-help and a lack of vocational programming and based on a
25 psychological evaluation that stated that the "inmate still denies any responsibility for the crime"
26 and needed to develop insight before being considered for parole. The Board was acting within
27 its authority when it considered petitioner's various preconviction factors and postconviction
28

¹ gains, yet concluded that he would pose an unreasonable threat to public safety. (See Pen. Code § 3041, subd. (b).)

Therefore, the petition is denied.

October 2 2006



David S. Wesley
DAVID S. WESLEY
Judge of the Superior Court

Clerk to give notice.

Send copy of order to:

Justo Escalante E-91258
CTF Central, F-Wing 302
P.O. Box 689
Soledad, CA 93960-0689